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JUN 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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CC Docket No. 98-78

The Competitive Telecommunications Association (“CompTel”), by its attorneys, respectfully submits the following comments on the Association for Local Telecommunications Services’ (“ALTS”) petition pursuant to Section 706 of the Telecommunications Act of 1996 to promote the deployment of advanced telecommunications capabilities.¹ For the reasons explained below, CompTel supports the ALTS approach to achieving Section 706’s goals. The actions ALTS identifies will promote full implementation of Section 251’s market-opening initiatives and best will encourage the rapid introduction of advanced telecommunications services to the American public. Therefore, the Commission should move rapidly to grant the relief requested in the ALTS petition.

¹ See *Public Notice*, Pleading Cycle Established for Comments on Association for Local Telecommunications Services Petition for Declaratory Ruling Regarding Section 706, DA 98-1019 (June 3, 1998). ALTS filed its Petition on May 27, 1998.

I. INTRODUCTION AND SUMMARY

Section 706(a) of the Telecommunications Act of 1996 provides that:

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.²

The FCC faces a choice among two fundamentally different approaches to this provision. One approach – illustrated by the ALTS petition—holds that increasing competition will spur all providers to deploy the most advanced technologies in the most rapid manner possible. This approach asks the Commission to ensure that open and fair access is provided by the ILECs, so as to let those competitive forces free. The other approach – illustrated by the BOC petitions – declares competition a failure and anoints the BOCs as the sole source of advanced telecommunications capabilities. It asks the Commission to grant the BOCs favorable treatment in order to “encourage” them to bring advanced services to the public.

The choice among these approaches is as easy as it is stark. The Commission should choose competition over monopoly, openness over exclusive access, opportunity for all over special treatment for some. In short, the 1996 Act – through Section 251 – shows the best way to encourage the deployment of all telecommunications services, including advanced services, to

² Telecommunications Act of 1996, Pub. L. No. 104-104, Title VII, § 706; *see* 47 U.S.C. § 157 nt. (hereinafter “Section 706”).

the public. The ALTS petition embraces these principles, and offers the Commission the best model to achieve the goals of Section 706. The Commission should redouble its efforts to ensure that the Act is fully implemented. If it does so, consumers can realize the full benefits of competition in all services, including those relying on the most advanced technologies available.

To fulfill Section 706's mandate and to increase competitive forces in local telecommunications services, CompTel urges the Commission to take a few bold and direct steps. These steps increase the ability of carriers to provide the most advanced services, are readily achievable, and fall clearly within the Commission's jurisdiction as interpreted by the Eighth Circuit. The Commission can and should implement the following steps as quickly as possible:

1. Clarify that Section 251(c) provides for interconnection and access to UNEs for purposes of advanced telecommunications services that is at least equal to that available for purposes of voice services.
2. Reform collocation to provide competitors the option to collocate through more economical and efficient means, such as through smaller collocation spaces, sharing of collocation space or "cageless" collocation.
3. Require ILECs to make the "recent change" process available to separate and combine UNEs.

In addition, the Commission should remain steadfast in applying the standard of Section 271 so as to maximize its incentive to encourage BOC compliance with Section 251. By promoting the full implementation of Section 251, the Commission adds fuel to the engine of competition that will drive the deployment of the most advanced telecommunications technologies to the widest possible universe of customers.

II. THE ALTS PETITION BEST PROMOTES THE GOALS OF SECTION 706 BY EMBRACING COMPETITION RATHER THAN REDUCING IT

Section 706 instructs the FCC (and state commissions) to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans," and suggests a number of potential means the commissions may employ to promote that goal.³ The fundamental difference between the ALTS petition and the petitions filed by several of the BOCs⁴ is in their faith in the pro-competitive nature of Section 251 of the Act to achieve Section 706's goal.

The ALTS petition reflects the view that deployment of these technologies to *all* Americans can be achieved best by enabling as many carriers as possible to provide such advanced services. If the Commission ensures that the means of providing these services are available, competition will encourage their rapid deployment. Thus, the ALTS petition asks the Commission to re-examine the pro-competitive provisions of the Act and fix those elements that are not working properly at this time. By taking action to force the ILECs to implement Section 251 for all technologies, including data technologies, the Commission increases opportunities for additional players to enter advanced telecommunications markets and to expand their own advanced networks to a wider geographic region. Ultimately, these increased competitive alternatives will promote the wider deployment of advanced services, as set out in Section 706.

³ Section 706(a).

⁴ Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11 (filed Jan. 26, 1998); Petition of U S West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26 (filed Feb. 25, 1998); Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32 (filed March 5, 1998).

The BOC petitions, by contrast, present Section 251 as an impediment to advanced services. The problem, in the BOCs' view, is not that Section 251 will not promote competition, but that it will be *too effective* in doing so. If they have to make advanced functionalities available to others, the BOCs claim, then they would rather not deploy them at all. Threatening non-deployment, the BOCs assert that they only will make the technologies available to the public if the Commission endorses their bid to keep any facilities they deploy from others. Thus, the BOCs ask the FCC to back away from Section 251, to excuse certain services or technologies from its terms, and to deregulate the BOCs' provision of data services. The key assumption behind the BOCs' petitions is that if the Commission does not assist the BOCs, no other entity will deploy advanced services to the broad market.

The Commission should not strain long between these two choices. Section 706 is not special interest, "free the BOCs" legislation. Rather, it is a mandate to promote advanced services by all providers on a competitively and technologically neutral basis. To achieve its goals, the Commission must ensure that opportunities are available to all providers, not just to the BOCs. That is one reason why, for example, Section 706 specifically identifies "measures that promote competition in the local telecommunications market" as one of the means the Commission should consider.⁵ Thus, the focus of the Commission's policies under Section 706 should be to expand competitive access to the features and functionalities useful in providing advanced telecommunications services. The ALTS approach does this; the BOCs' approach does not.

Therefore, in the upcoming proceeding mandated by Section 706(b), the Commission should identify those areas where the Act is not expanding opportunities for additional entrants

⁵ Section 706(a).

to provide service, and on actions it can take to improve the ability of multiple providers to enter advanced telecommunications markets. To be sure, the BOCs will be among the providers offering such services. However, the BOCs already are investing billions of dollars to deploy advanced technologies, in order to keep up with the CLECs' construction of state of the art network facilities. The best way to maximize the BOCs' incentives to continue to deploy such technologies is to maximize the competitive pressures that already are forcing them to invest in their networks. Addressing the ILECs roadblocks to delay implementation of Sections 251-52 of the Act will achieve these purposes.

III. THE COMMISSION SHOULD TAKE ACTIONS IMMEDIATELY TO ENSURE THE ABILITY OF COMPETITORS TO PROVIDE ADVANCED SERVICES

Following the competitive model to Section 706, there are several specific steps the Commission can and should take to increase competition in all services, including advanced services. These actions will increase the ability of carriers to provide the most advanced services, are readily achievable, and fall clearly within the Commission's jurisdiction as interpreted by the Eighth Circuit. The Commission should implement the following steps as quickly as possible:

1. **Clarify the ILECs' Section 251(c) Obligations.** As the ALTS petition notes, at every possible juncture, the ILECs are employing litigation, foot-dragging and outright obstinacy to make local interconnection and access to UNEs as difficult, expensive and slow as possible.⁶ Seizing upon every ambiguity (and in some cases even in the face of clear FCC directives), the ILECs are impeding the progress of competition, and in particular are attempting to rewrite the Act to exclude data services. These positions are frustrating CLEC efforts to obtain

interconnection for purposes of providing data services and to obtain access to data functionalities on an unbundled basis.

The Commission should put an end to this form of stonewalling as quickly as possible. Exercising its authority under Sections 251(c)(2) and (c)(3), the Commission should clarify that the Act mandates at least the same rights to interconnection and access to UNEs for data services and functionalities as it does for voice services.

2. **Reform collocation.** Most ILECs are insisting upon physical collocation at every point in the network where access to UNEs is to be made available. In addition, they are driving up the cost and complexity of collocation with arbitrary restrictions on the use of collocation space and excessive size and construction requirements. CompTel agrees with ALTS' recommendation that the Commission reopen docket 91-141 to issue revised collocation rules.⁷ The Commission should explore all measures to allow competitors to collocate through more efficient and economical means, including the use of smaller collocation spaces when requested, sharing of collocation space, "cageless" collocation and cross connections to the space of other collocated carriers.

3. **Mandate More Efficient Means of Separating and Combining Network Elements.** In response to the Eighth Circuit's ruling that ILECs need not combine network elements, the ILECs have insisted upon the mandatory physical separation of UNEs in all instances. As CompTel has demonstrated previously, this policy is as unnecessary as it is anticompetitive.⁸ The Commission should exercise its authority under 251(c)(3) to define

⁶ ALTS Petition at 11-17.

⁷ *Id.* at 20-21.

⁸ *See, e.g.,* Presentation of Joseph Gillan on behalf of the Competitive Telecommunications Association, Common Carrier Bureau Forum: Combinations of Unbundled Network Elements ((June 4, 1998).

network elements and to specify the means for access to them, to require ILECs to make the "recent change" process available to separate and combine UNEs. The "recent change" mechanism allows the ILECs to separate UNEs electronically, and enables CLECs to combine those elements with others in a quick and efficient manner, without the risks, delays and difficulties associated with a physical disconnection of service to a customer.


4. **Adhere to Section 271.** As the Commission has recognized, Section 271 plays an important role in ensuring that the BOCs have an incentive to implement Section 251 fully and faithfully.⁹ The Commission should reject attempts to remove certain services from the ambit of Section 271, as this not only is contrary to the Commission's legal authority but will weaken the incentive structure of Section 271. In addition, the Commission should remain steadfast in applying the standard of Section 271, insisting upon complete satisfaction of all of the Act's prerequisites to interLATA service.

⁹ See, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, FCC 97-298, ¶¶ 13-23 (August 19, 1997).

By promoting the full implementation of the Act in these ways, the Commission adds fuel to the engine of competition that will drive the deployment of the most advanced telecommunications technologies to the widest possible universe of customers.

Respectfully submitted,

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June 18, 1998